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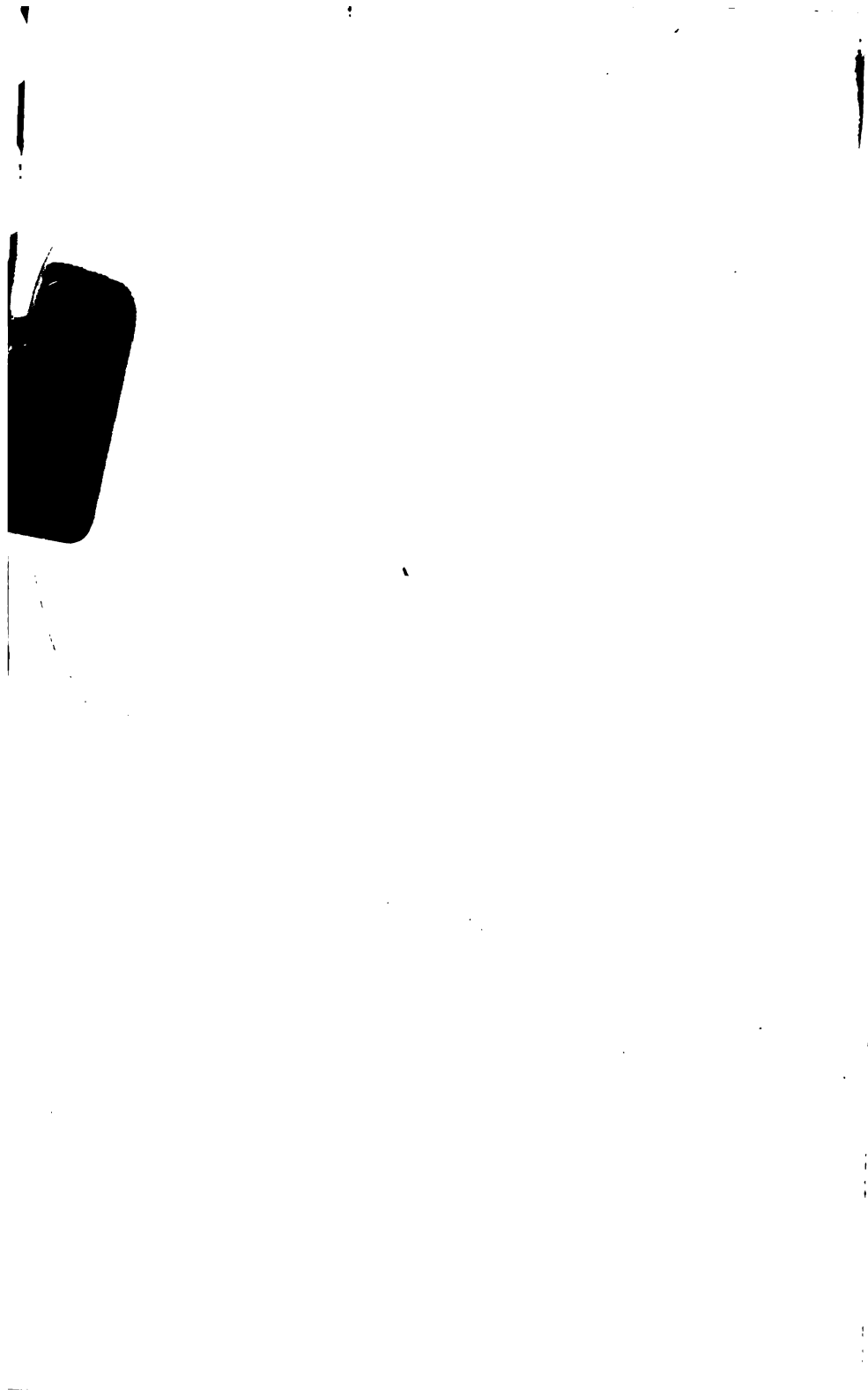
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## RECOGNITION.

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THE object of these pages is to give an account, at greater length than is possible in a Treatise on International Law, of the two cases, in which the principles have been most fully discussed that govern the Recognition, as a Sovereign State by other States, of a province or colony which has revolted from its parent State, and has erected itself into a separate community.

The first of these cases is that of the Recognition of the Independence of the United States by France in 1778; the second, that of the Recognition of the Independence of the States of Spanish America by the United States in 1822, and by England in 1825. They are the leading cases of International Law on the subject of Recognition. The first has found a place in the Causes Célèbres of Martens; the documents illustrating the second have not been collected in a separate form. In their circumstances they are widely different: but each has an interest of its own; each marks an epoch in history; and a comparison of the two will enable us to trace the progress of International Law, till its principles and practice on the subject of Recognition may be considered to have become settled. Taken together, these two cases make up a chapter from the history of the North American and South American States containing an account of the foundation of their independence, an angry correspondence and "models and master-pieces of diplomatic composition," and the worst precedent and the best precedent of Recognition.

America is at this moment furnishing International Law with a third leading case on the same subject. The secession—for secession under a claim of constitutional right, if

resisted by the parent State, is, as far as other nations are concerned, revolt—the secession of the Confederate States has forced the question of their recognition as an independent State upon our consideration; and the consideration of that question has already produced so much discussion on the principles of Recognition, that nothing really new remains to be said. Both the precedents mentioned above have been again and again referred to. Still, though nothing new be said, the subject will continue to be discussed until—for we cannot suppose any other termination—the actual recognition of the Confederate States. Many are called upon to form an opinion, who have not access to the treatises, in which the maxims now acknowledged among nations as their guides, are stated; and still less to the sources from which those maxims are drawn. My wish is, to be of use to those who are anxious to consult the original authorities for the principles of International Law on the subject, and to learn the past policy of this country, but who have not leisure or opportunity to search the volumes of the State Papers published by the Foreign Office, Martens' *Recueil*, or the other sources of reference. With this view, I have put the notes of my own reading in a form available for others. They consist chiefly of passages from original documents, especially from the documents relating to the recognition of Spanish America. Should the passages appear long, it must be remembered that a passage imperfectly quoted is worse than useless as a reference. My own experience is, that there is more often reason to complain of the shortness than of the length of a quotation.

It is not for a moment supposed that precedents from the past will prove infallible guides for the future. A subsequent case seldom occurs precisely similar to a previous one. But by examining the precedents, we shall find the principles that have been established; and there can be but one opinion as to the importance of adhering strictly to those principles in practice. The influence of a country in its foreign relations depends almost wholly upon the clearness of the principles which it adopts, and the consistency with which it is known to carry them out.

Recognition is a chapter of International Law of comparatively recent introduction. The subject has grown in importance with the expansion of the Rights and Duties of Neutrals. Consequently, the earlier text writers contain but little upon it. Recognition was in their time a step towards, or a kind of, Intervention. The measure can obviously be adopted with this view, and cannot then be distinguished from intervention. It must be interpreted according to the intention shown by the surrounding circumstances. The recognition of the revolted province may be made in such a manner, and under such circumstances, as actually to have the character of a hostile act to the mother country. Such was the recognition of the United States by France, in 1778. Again, without going so far, it may be a moral intervention. The recognition may be intended to show the sympathies of the country recognising, in favour of the revolted provinces, and thus to afford whatever moral help this expression may carry with it towards the establishment of their independence. A judgment on the merits of the dispute between the province and the mother country may thus be given, which may wound the susceptibilities of the latter, without amounting to an act of hostility. But neither of these courses can be called absolute neutrality.

The discussions of the earlier writers took the direction thus mentioned, because their attention was turned to the circumstances which justify intervention. The precedents before them were those of actual or moral intervention. Vattel wrote with the example of William of Orange before his eyes. His remarks, from which subsequent writers have borrowed, are not very clear or consistent; but they show the degree of distinctness which the law had attained, and the propositions established at the time of the publication of his book. In the first place, he states the conditions justifying intervention, and adds,—

“ Whenever, therefore, matters are carried so far as to produce  
 “ a civil war, foreign powers may assist that party which appears  
 “ to them to have justice on its side. He who assists an odious  
 “ tyrant,—he who declares for an unjust and rebellious people,—  
 “ violates his duty. But when the bands of the political society

" are broken, or at least suspended, between the sovereign and his people, the contending parties may then be considered as two distinct Powers; and, since they are both equally independent of all foreign authority, nobody has a right to judge them. Either may be in the right; and each of those who grant their assistance may imagine that he is acting in support of the better cause." \*

2ndly.—" Those who thus assist either side are entitled to be treated on the usual footing of enemies in general, and, according to the laws of war, as auxiliaries in a regular war."

3rdly. He says,—

" After having established the position that foreign nations have no right to interfere in the government of an independent State, it is not difficult to prove that the latter has a right to oppose such interference. A sovereign has a right to treat those as enemies who attempt to interfere in his domestic affairs otherwise than by their good offices."†

Now, it is obvious that a foreign Power intervening in a civil war, however justifiable the intervention, makes itself the ally of one party, and the enemy of the other. This intervention is war with one or the other party. Vattel goes so far as to say, that it is a regular war, in some cases morally justifiable; and stops at that point. But since his time, the increasing desire not to engage in wars which can be avoided, has turned attention to defining more accurately the rights and duties of neutrality. To the question, what circumstances should be held to justify the intervention of a foreign Power in a civil war, another is added, what conduct should a foreign Power pursue, so as not to give just cause of offence either to the original State or to the revolted portion? On the one hand, what act should this foreign Power abstain from doing? On the other, what acts may this foreign Power perform for its own interest, which are not to be considered by either of the contending parties as acts of hostility?

Great misconception often prevails as to the meaning of the term Recognition, the nature of the act, and the consequences

\* Vattel, ii., c. 4, s. 56.

† Ib. s. 57.

resulting from it to the State recognised. We find this misconception common now ; and Sir J. Mackintosh and Mr. Canning complained of it in 1824.

In its primary sense, in International Law, Recognition is the term appropriated to the acknowledgment by a State of the independence of a portion or a province which has separated from it. The State recognising cedes its claim of sovereignty, and confers on the portion or province recognised the legal status of independence. Till that moment, worthless as the claim may be, the one has a claim of sovereignty over the other, which by that act it resigns. Thus Great Britain recognised the independence of the United States in 1783.

But there is a secondary use of the word, as applied to the act by which a foreign Power expresses its opinion, that the portion which has revolted from its parent State has acquired actual independence of that State. The foreign Power has no sovereignty to cede. The recognition, therefore, does not confer independence, but implies a solemn verdict on the part of the Power which recognises, recording the establishment in fact of that independence.

The following passage from Sir J. Mackintosh's speech in 1824, on the recognition of the Spanish American States, explains this distinction clearly :—

“ Recognition is a term which is used in two senses so different from each other as to have nothing very important in common. The first, which is the true and legitimate use of the word ‘recognition,’ as a technical term of international law, is that in which it denotes the explicit acknowledgment of the independence of a country by a State which formerly exercised sovereignty over it. Such recognitions are renunciations of sovereignty,—surrenders of the power or of the claim to govern.

“ But we, who are as foreign to the Spanish States in America as we are to Spain herself,—who never had any more authority over them than over her,—have, in this case, no claims to renounce, no powers to abdicate, no sovereignty to resign, no legal rights to confer. What we have to do is, therefore, not



“ recognition in its first and most strictly proper sense. Our  
 “ recognition is virtual. The most conspicuous part of such a  
 “ recognition is the act of sending and receiving diplomatic  
 “ agents. It implies no guarantee, no alliance, no aid, no appro-  
 “ bation of the successful revolt, no intimation of an opinion  
 “ concerning the justice or injustice of the means by which it  
 “ has been accomplished. These are matters beyond our juris-  
 “ diction. It would be an usurpation in us to sit in judgment  
 “ upon them. As a State, we can neither condemn nor justify  
 “ revolutions which do not affect our safety, and are not amen-  
 “ able to our laws. We deal with the authorities of new States  
 “ on the same principles and for the same object as with those  
 “ of old. We consider them as Governments actually exercising  
 “ authority over the people of a country with whom we are  
 “ called upon to maintain a regular intercourse by diplomatic  
 “ agents for the interests of Great Britain, and for the security  
 “ of British subjects.”\*

In his reply, Mr. Canning puts the same distinction shortly  
 thus :—

“ Recognition has clearly two senses, in which it is to be  
 “ differently understood. If the colonies say to the mother  
 “ country, ‘ We assert our independence,’ and the mother coun-  
 “ try answers, ‘ I admit it,’ that is recognition in one sense. If  
 “ the colonies say to another State, ‘ We are independent,’ and  
 “ that other State replies, ‘ I allow that you are so,’ that is  
 “ recognition in another sense of the term. That other State  
 “ simply acknowledges the fact, or rather its opinion of the  
 “ fact; but she confers nothing, unless, under particular cir-  
 “ cumstances, she may be considered as conferring a favour.”†

The misconception arises from confounding these two senses.  
 People pass from the one use of the word to the other use. Re-  
 cognition of independence by a foreign Power is spoken of as  
 if it gave the independence conferred by recognition on the part of  
 the mother country, instead of being spoken of as the acknow-  
 ledgment of a fact, which must exist to be acknowledged.

\* Mackintosh's Works, p. 748.

† Canning's Speeches, v., p. 300.

I. The first of the two cases before us presents an angry correspondence, and a precedent of little value ; but, in return, it presents an amusing story. The transactions which ended with the recognition of the United States by France in 1778, were marked throughout by a want of good faith to England. Lewis the Sixteenth, his Ministers, and the French people treated the propriety of the recognition of the United States not as a question of international law, but as a question of the interests of France. Arguments from international law were indeed appealed to, but in support of foregone conclusions, and of a policy adopted without regard to any law. Every fresh diplomatic and even literary discovery on the subject places this in a clearer light. The papers of Beaumarchais have filled up what the letters of Franklin left untold. The appeal to international law is of value to us in tracing the progress of international law, but the main interest of the whole transaction is historical. It was a political intrigue, in which Lewis the Sixteenth, the Comte de Vergennes, and Beaumarchais were the chief actors.

From the beginning, the dispute between England and her American colonies attracted the eager attention of the French Government, and of the French people. When the dispute became revolution, their interest in it deepened. The treaty of 1763, at the end of the seven years war, had always been felt in France to be a humiliation, and the nation hoped that the events in America would lessen the influence of England, and afford an opportunity of repairing their own disgrace. The sympathies of French society displayed themselves even in social habits. "With a frivolity," observes a French historian, "which we mix with our most serious business," whist was banished for a game called Boston. Some, too, saw in the declaration of independence of the 4th of July, 1776, the realisation of the theories of the "Contrat Social," and the opening of a new era. But all hated England.

In 1776, Beaumarchais, at once a secret envoy and the author of "Le Barbier de Seville," a politician and a speculator, presented a memoir to the Government on the subject, which ultimately determined their course of action. The memoir is

curious, for a slight change of names would make the sentences express anticipations aroused among ourselves with regard to Canada, by the present American war. He argued in favour of assisting the Americans, in order to save the French Antilles, and even to preserve peace. If England is victorious she will seize our sugar islands to defray the cost of the war; if she is defeated, she will make the same attempt to repair her losses. If the parliamentary opposition comes into office, and reconciles England with her colonies, both will unite against us. Peace between France and England can be preserved only by preventing peace between England and America; and the only means of accomplishing this is by sending assistance to the Americans sufficient to place their forces on a level with those of England, but no more. He recommended that the Americans should be assisted secretly, and offered to undertake the task.\*

Lewis the Sixteenth and the Comte de Vergennes, his Minister for Foreign Affairs, shrank from adopting advice which they foresaw must end in war. They thought that the vexatious exercise of the right of search, alleged to have taken place over French vessels, even in French waters, might afford a just ground for war; but they also thought that the French navy was not in a state to justify the risk. The whole subject was referred to the Council. M. Turgot was at that time Director-General of the Finances, and thus a member of the Council. He wrote a paper, remarkable not only for the thorough examination of the subject in all its branches, but for the views of colonial policy, and the anticipations contained in it. Nothing, he said, can stop the course of things, which will certainly bring about, sooner or later, the absolute independence of the colonies of England; and the result will be a complete revolution in the political and commercial relations of Europe and America. "I firmly believe that all mother countries will be obliged to abandon all empire over their colonies; to leave them complete freedom of trade with all nations, and to be content with sharing this freedom with others, and with being united to their colonies by the bonds of friendship and fraternity." He urged many reasons against an offensive war: among others, that such a war would bring

\* Beaumarchais et son Temps, par Loménie, i. 102.

about the reconciliation of the mother country with the colonies by inducing her to yield to their demands. His advice was, to enable the colonists to procure more easily by commercial means the munitions of war and the money needed, without going beyond the bounds of official neutrality, and without giving direct assistance.\*

This fear of a reconciliation between England and her colonies, to be cemented by a war with France, was, throughout, the vision present to the French statesmen. At a later period, the American agents made use of this fear for their own purposes.

The advice of Turgot coincided with that of M. de Vergennes, and was followed. Forty thousand pounds were secretly advanced by the French Government to Beaumarchais to establish a commercial house. Beaumarchais received the money on the 5th of June, 1776. The curious letter from M. de Vergennes to the King, of the 2nd of May, 1776, probably refers to this transaction. If not, it proves that an advance was made directly to the Americans within a few days of that to Beaumarchais. The Minister wrote, that he submitted for the King's approval "the warrant authorising him to advance one million francs for the service of the English colonies," and a draft of his answer to Beaumarchais. This answer was not to be written with his own hand, or by any of his secretaries, but by his son, whose writing could not be known, and for whose discretion, though only in his fifteenth year, he could answer. To prevent the transaction being imputed to the Government, he proposed to send for M. Montaudoin, upon the pretext of obtaining some information from him; but in reality to entrust him with the task of transmitting the money to the Americans, and of impressing upon them the precautions to be observed.†

Another forty thousand pounds was advanced by the Spanish Government through the influence of the French Minister; and the energy and enthusiasm of Beaumarchais found the

\* Turgot, viii. pp. 496, 502.

† Martens' *Nouv. Causes Célèbres*, i. p. 380.

rest of the capital. The house traded under the name of "Roderigo Hortalez & Company." Nor was the house of Hortalez & Co. the only firm which received this assistance. The course of business was thus arranged: These firms were allowed to buy stores from the public arsenals. The Americans were to deal with the firms, and were to pay for the supplies by cargoes, for the importation of which every facility was to be afforded. Accordingly, when Mr. Deane, the first agent of the Colonies, applied to the French Government for two hundred guns, he was refused officially, but officiously referred to Beaumarchais, who procured for him not only the guns, but artillery and engineer officers. These events have long been well known, from the correspondence of Franklin: but it was not till the publication of the papers of Beaumarchais that the respective parts of the house of Hortalez, the Minister, and the American envoys at Paris were fully made public. From these papers we gather the following amusing account of the transaction:—The officers embarked with the guns on board the *Amphitrite* and two other vessels, equipped at Havre by the house of Hortalez. To escape capture by English cruisers, the ostensible destination of the vessels was the French Antilles. But the nature and magnitude of the preparations, and the presence of Franklin at Havre, excited the suspicions of Lord Stormont, the English ambassador. The head of the house of Hortalez himself contributed to the discovery. He had gone to Havre under an assumed name to superintend the preparations. On arriving there he found that one of his own plays was to be acted, and he could not resist the temptation of being present at the rehearsal and giving hints to the actors. The mercantile agent was found to be no less a person than the play-writer, and the play-writer was well known to have been employed as an agent of the French Government. Lord Stormont indignantly remonstrated, and M. de Vergennes laid an embargo on the two vessels, for the *Amphitrite* had already sailed. Beaumarchais applied for the removal of the embargo. An enigmatical letter from M. de Vergennes followed. The vessels sailed, and, after many adventures, reached Ports-

mouth, in New Hampshire, in 1777. But the Americans appear to have misunderstood the character of the transaction. One of their agents, it is said, misled them by mistaken information. They considered the munitions of war as presents from the French Government, and the demand for payment intended merely to give a mercantile colour to the gift. The remittances were not made by Congress at the times stipulated for by the agents in Paris. In vain Beaumarchais pressed for payment. His biographer has remarked, that his letters might well deceive the Americans. Demands for payment were coupled with high-flown protestations of devotion to their cause. His letters might be those of an urgent creditor, but they might also be the letters of a political agent veiling the complicity of his Government by the assumption of a mercantile character. At length, the Amphitrite brought back a small cargo of indigo and rice. The cargo was consigned to the American agents, who considered it their own, and, as they were in want of money, took possession of it. The house of Hortalez was obliged to threaten legal proceedings to recover the first and small return for an enormous outlay.

Meanwhile, M. de Vergennes advanced another £40,000, and the affairs of Beaumarchais were so prosperous that he had a fleet of no fewer than twelve vessels. But it was long before the Americans believed in the reality of the claims; and when they admitted their reality they disputed their accuracy. In his old age, bankrupt and in exile, from his garret in Hamburg, Beaumarchais begged for payment, in language which this time admitted of no double meaning: "Americans, " I die your creditor. Let me on my death-bed leave my " daughter as a legacy to you; and ask for her dowry your debt " to me. Give alms to your friend, the only reward for his " repeated services. *Date obolum Belisario.*" He died unrewarded. Thirty-six years afterwards, in 1835, his representatives received £32,000 in satisfaction of his claim for £90,000.\*

To return to the history of French policy. The events of this period are summed up by Martin, in his History of France:—

\* Beaumarchais et son Temps. ii. p. 83.

" It became more and more difficult for the French Govern-  
 " ment to maintain the equivocal position it had taken up.  
 " The English incessantly renewed their bitter complaints of  
 " the presence of agents of the 'Rebels' in France, of the  
 " admission of American privateers into French ports, and  
 " of the consignments of munitions of war made in France on  
 " account of the rebels. The court of Versailles disavowed the  
 " consignments, and sometimes stopped them, sent away the  
 " privateers,—for the most part French, with a few American,—  
 " which when refused entrance at one port entered another,  
 " declared that it tolerated the agents of Congress only as private  
 " persons, and complained in turn of the insults to our flag, and  
 " the vexatious search of our vessels, which the English indulg-  
 " ed in even on our shores. On the 4th of July, 1777, the  
 " Minister of Marine gave notice to the Chambers of Commerce  
 " that he would protect and claim restitution of the vessels  
 " which the English seized under pretext of their trading with  
 " America. Fleets were made ready for sea at Toulon and Brest.  
 " Yet the Minister of Foreign Affairs, in an official reply to the  
 " Cabinet of St. James's of the 15th of July, still protested  
 " that France was faithful to her treaty engagements."

This policy was continued till the news arrived of the sur-  
 render of Burgoyne at Saratoga. That event increased the  
 fear of a reconciliation, and induced the French Government  
 to adopt a more decided course. The overtures of the American  
 agents were immediately accepted; and on the 6th of February,  
 1778, a treaty was entered into, by which the independence of  
 the United States was acknowledged. On the same day, an  
 offensive and defensive alliance was signed, to take effect in  
 case of a rupture between France and England. That same  
 evening Lord Stormont, whom Beaumarchais described to  
 Lewis as knowing and reporting everything said even at his  
 council-board, wrote to the Secretary of State, Lord Wey-  
 mouth, that the treaty was signed. On the 18th of February,  
 he wrote again, that, from the exactest information he could ob-  
 tain, two treaties had been made "with the rebels," one  
 merely commercial, the other a treaty of alliance. If the  
 latter was made, there was no doubt France was resolved to

support her perfidy by open force. Advantage and dignity might be derived by striking the first blow, by producing the numberless proofs they had of the perfidy of France, and ordering the fleet to avenge it.\*

On the 13th of March came the French official communication of their engagements, beginning with the following words:—

“ The United States of North America, which are in full possession of independence, as declared by their Act of the 4th of July, 1776, having proposed to the King to consolidate the connexions that have begun to be established between the two nations, the respective Plenipotentiaries have signed a treaty of amity and commerce.”

The concluding paragraph stated that Lewis had taken eventual measures in concert with the United States to protect the lawful freedom of the commerce of his subjects, and to sustain the honour of his flag.

On the 17th, George the Third sent a message to Parliament, announcing that he had withdrawn the English Ambassador from Paris, “ in consequence of this offensive communication.”

I have quoted the communication to point out that the “ full possession of independence ” was put forward as the justification of the engagements entered into. But no one was deceived. The communication was insulting: “ *assez brusquement remise*,” says Martens. The treaties had been made to prevent the reunion of the colonies with the mother country;† and though the letter of Lewis containing this statement was not then published, the fact was well known. All the attendant circumstances proved hostility. The recognition was the open act which closed a series of clandestine intrigues. The communication was felt on all hands to be intended as an insult. It was accepted as an insult.

The two countries were soon engaged in hostilities, though without any actual declaration of war; but it was not till the following year that M. de Vergennes published a manifesto in justification of the policy of France. The tone of the manifesto

\* Stanhope's Hist. of England, vi., App. xxiii.    † Flassan, vii. p. 179.



was bitter. In this and a subsequent paper the vocabulary of exasperating language at the service of hostile nations was well-nigh exhausted. England was described as a Power whose traditional policy was one of vexation and acts of violence. Her maxim was, her right to be the exclusive mistress of the seas; to this all her efforts were directed. She found the power of France in her way, and she resolved that it must be destroyed or confined within narrow bounds. If every treaty from the time of Cromwell were examined, there would be found in all evident and revolting traces of the haughty, envious, and encroaching policy of the Court of London. The manifesto contrasted such conduct with the pacific and loyal behaviour of France, and sought to throw on England the responsibility of having begun the war. It was wholly an appeal to facts. The transactions just related form, certainly, a curious commentary on the paper.

An answer was written by Gibbon. Like the manifesto of M. de Vergennes, it dealt chiefly, though not so exclusively, with facts. The justification of England was reduced to the proof of two propositions:—

1. That, during a period of profound peace, France had formed relations, at first secret, and afterwards open and avowed, with the revolted colonies of America.

2. That, according to the best recognised maxims of the Law of Nations, and actually subsisting treaties, these relations might be regarded as violations of peace, and that the avowal of these relations was equivalent to a declaration of war.

We need not follow the reasoning. One remark is enough. Such a mode of stating the case avoids any discussion on the abstract principles of recognition. The answer was written upon the facts contained in Lord Stormont's despatches. Like the manifesto of M. de Vergennes it was bitter in tone. France was represented as the perpetual enemy of the public repose. She did not blush to lower her dignity by forming secret relations with rebellious subjects. Perfidy and dissimulation reigned in her counsels. The most insidious policy was concealed under the most seductive professions,—professions which served to give the lie to her declarations. She could find no excuse for

her conduct, except by an unfounded and improbable assumption of intentions on the part of England. The Court of Versailles stated, with an air of frankness and simplicity, that it had found the colonies independent. The most important towns were in the occupation of the English army. The English flag ruled over the American seas. The Court of Versailles had alone contributed, by clandestine assistance, to fan the flame of revolt, and, at the rumour of a reconciliation, concluded the treaty to throw fuel on the flames. Under these circumstances it would be an insult to reason and truth to deny that the declaration of the 13th of March of the treaty and the eventual measures was a declaration of war.

The answer called forth "Observations" in reply. In the midst of irrelevant abuse, and statements which have lost their interest, because we know them to have been untrue, we shall find the principles stated upon which the policy of France claimed to be founded. Some of these principles will command universal acceptance. Freedom of trade between the French and Americans was thus defended:—

"In time of war, commerce may be divided into two branches: the first comprises merchandise not prohibited; the object of the second is merchandise known under the name of contraband of war. Nations who wish to be neutral, continue perfectly free to carry on the first kind of commerce with the belligerent parties: but the second is prohibited; the merchandise may be intercepted and confiscated, in conformity with the rules prescribed by usage or treaty. On referring both to one and the other, it will be found, not that the commerce in objects called contraband is a breach of neutrality, but that the individuals who engage in it simply render themselves liable to the penalty of confiscation."

The statement is clear and accurate, but it was not to the point. The indigo and rice brought home by the *Amphitrite* were not contraband of war. The guns and officers taken out in the *Amphitrite* were contraband of war. The putting on board a contraband cargo by Beaumarchais, simply rendered his vessel liable to confiscation. Furnishing a contraband cargo

out of the public stores, by the aid of public money advanced by the Minister under a warrant from the King, was a breach of neutrality.

The Observations further state, that the act of the King of France in recognising and forming treaty relations with the Americans, was based on two incontestable truths: first, that, at the date of the 6th of February, 1778, the Americans were in public possession of their independence; and, secondly, that the king had the right of regarding this independence as existing, without being obliged to examine its legality. Both these points are argued at length and with ability. Upon the second, it is said:—

“ Whether the United States had or had not the right of  
 “ abjuring the sovereignty of England; whether their possession  
 “ of independence be legitimate or not, are questions which it  
 “ is not for France to discuss. The King is not the judge of  
 “ the domestic quarrels of England. Neither the law of  
 “ nations, nor treaties, nor morality, nor policy, imposed on  
 “ him the obligation of being the guardian of the loyalty which  
 “ English subjects may owe to their Sovereign. It is suf-  
 “ ficient for the justification of His Majesty that the colonies,  
 “ which form a considerable nation, as well by the number of  
 “ their inhabitants as by the extent of their dominions, have  
 “ established their independence not only by a solemn act, but  
 “ also in fact, and have maintained it against the efforts of the  
 “ Mother Country. Such was, in effect, the position of the  
 “ United States when the King began to negotiate with them.  
 “ His Majesty was perfectly at liberty to regard them either  
 “ as independent, or as subjects of Great Britain. His Majesty  
 “ has chosen the former course, because his safety, the interest  
 “ of his nation, his invariable policy, and, above all, the secret  
 “ projects of the Court of London, imposed on him this  
 “ obligation.”

The Paper might have stopped there, but it goes on to lay down this principle:—

“ That the law of nations, the policy and example even of  
 “ England, authorised the King to regard the Americans as  
 “ independent in fact, from the epoch of the 4th of July, 1776,  
 “ and *a fortiori* from that of the 6th of February, 1778.”

This assertion might perhaps be made as to the latter date. The French Government might be justified in saying that the surrender at Saratoga rendered the attempt to conquer the Americans hopeless. But, at the earlier date, they were not independent in fact. The proposition, that the King of France had the right of treating the Americans as independent after the publication of their manifesto of the 4th of July, 1776, must be a proposition of law, resting on the principle that in such cases of dispute between a revolted portion and the parent State, foreign Powers are not bound to look beyond the declaration of independence. This appears to be the view of Hautefeuille: "Neutral foreigners," he says, "may make with the two parties such treaties of commerce, of navigation, of recognition, as they judge convenient, provided they abstain from taking any part in hostilities: provided they do not furnish assistance in men or munitions of war; provided, in a word, they discharge the duties of neutrality."\* But this view is opposed to the great current of authority. He stands alone, I believe, in his opinion. Enough, however, has been said to show, that, tried even by this standard, the policy of France was one of intervention from the first. An English writer may be open to the suspicion of looking, even at past history, from an English point of view. It is safer to quote a well-known authority in diplomatic literature. This is the judgment of Martens upon the whole transaction:—

"The Court of Versailles displayed a profound policy and uncommon skill in the execution of its plan of wishing to serve as guide to the American colonists, and of conducting them openly to independence. It may even be said that in no other affair, however important, and at no other time, has the French Government given equal proof of sagacity and constancy. It worked underground as long as it was perilous to discover its agency; and it marched with a bold front from the moment that the success of the colonists allowed it to see in them sure allies. It entered into the struggle when its armies, and above all its fleets, were ready;

\* *Droits des Nations Neutres*, i. 452.

“ when all nations pronounced in its favour; when, in a word, everything promised it victory.”\*

The French have always looked with pride on their share in the establishment of the independence of the United States. They call the war of 1778 the American war. In a paper lately written in the *Revue des Deux Mondes*, containing an account of a campaign with the army of the Potomac, by a French officer, the writer traces with natural pride the lines of Rochambeau, in front of York Town:—“The combined operations of Washington and Rochambeau,” he says, “were consummated by the capitulation which insured the independence of the United States. On the ramparts of York Town the blood of French soldiers sealed an alliance to which the United States have owed their prosperity and greatness.”†

The more true the boast, the less valuable is the precedent in international law. This second surrender—the capitulation of Lord Cornwallis—took place on the 19th of October, 1781. The provisional treaty of peace between England and the United States, by which the independence of the latter was first acknowledged by the former, was made on the 30th of November in the following year. But this capitulation really ended the struggle. The English troops still held the positions of New York, Charleston, and Savannah; and more fighting took place, but no reinforcements were sent out, no new effort was made. After this date, England could not, I think, have complained of the recognition of the United States by neutral nations. The dominion over the country had passed out of her hands, though she retained some outposts. But the recognition of the independence of the United States by France in 1778, was followed by three years of war, in which France herself took a considerable part, before the independence was really established.

II. The second of the two cases which make up our chapter of history is separated from the first by nearly half a century. It differs from the former in almost every important particular. In this case, the State Papers are excellent, the precedent

\* Martens' Nouv. C. C. i. p. 498. † Rev. des deux Mondes, Oct. 14, 1862.

is valuable, and the historical portion is unattractive and tedious. The negotiations relative to the Recognition of the States of Spanish America both by the United States in 1822, and by England in 1825, were conducted with a careful regard for facts, and also for the feelings of Spain. Hence this case forms the real precedent for the conduct of neutral nations. In this consists its chief, almost its only interest. Forty years ago real enthusiasm was felt in the historical events, but in the present day the very names of the battles which decided the fate of the Continent are unknown to more than half of the educated world. It is not too much to say, now that the anticipations, entertained at the time of the revolution, of the future prosperity of the Spanish American States, have been disappointed, that the historical interest of the case is completely merged in its diplomatic interest. I shall therefore mention the events, with their dates, only so far as they are necessary as an introduction to the diplomatic papers.

In the beginning of the year 1810, the Spanish possessions in the Americas reached from 37° 48' north latitude, to 41° 43' south latitude, along a line of nearly 6,000 miles. The most northerly point was San Francisco; the most southerly, Fort Maultin, at the lower extremity of Chili. These possessions were longer than Africa; and at their greatest width wider than Russia. They were divided into nine governments: Mexico, Havanna (which included the Floridas), Guatemala, Porto Rico, Caraccas, New Granada, Peru, Chili, and Buenos Ayres.\* In that year the revolutionary movement began, which ended in the independence of Mexico and of the South American colonies. The ultimate causes of the revolution were discontent with the Spanish system of colonial government; unwillingness to be dragged along with the fortunes of the mother country during the period of Spanish degradation in the French wars; and a growing sense that the wide extent and increasing trade of the colonies entitled them to independence. The master spirit of the revolution was Bolivar; and in the minds of English readers with his name is associated that of Lord

\* Humboldt's *Essai Politique*, Vol. i. liv. 1, chap. 1, p. 4.

Cochrane, whose narrative of his services in the liberation of Chili and Peru has been recently published.

In the course of 1810, revolutions broke out in Caraccas, Chili, Buenos Ayres, and New Granada.\* At first, and for different periods, in different provinces, the authority of Ferdinand VII. was acknowledged; but not the authority of the self-constituted Juntas, or of the Regency of Cadiz, which professed to act in the king's name. But from the outset, notwithstanding these professions, there was a party which aimed at separation. The earlier stages of the revolution were attended with doubtful success, and the contest really depended upon the comparative strength in each province of the loyalists and the independents, as the parties in favour of retaining or of dissolving the connexion with the mother country were respectively called. Spain was too feeble and too much engaged at home to interfere till late, or even then with a force sufficient for the subjugation of her colonies.

Caraccas united with the neighbouring provinces to form the Confederation of Venezuela. A declaration of independence was put forth on the 5th of July 1811; but though the Spanish authority was at first overthrown, it recovered its hold, and for a time appeared firmly re-established. The independents then joined their fortunes to those of New Granada, where a revolution had also taken place. The two provinces united on the 19th of December, 1819, to form the Republic of Columbia. Bolivar was made President. Under his auspices, the independents were again successful, and an armistice with the Spaniards followed, in hopes that a settlement might be made and bloodshed spared. But the armistice expired without a settlement, and hostilities began again. On the 24th of June, 1821, Bolivar completely defeated the Spanish army at Carabobo.† From this battle the independence of Columbia dates. The remnants of the Spanish forces retreated to Puerto Cabello, where they remained powerless and besieged. It was, however, two years before they actually capitulated. Meanwhile the sovereignty of the new republic was undisputed.

\* Annual Register, 1810, pp. 223—231.

† Annual Register, 1811, p. 261.

In Chili, a declaration of independence was published in 1811, but the Spanish authority was not completely overthrown till 1818. In that year the royalist army was annihilated at the battle of Maypu. Out of six thousand men who went into battle, two thousand were killed and three thousand five hundred were taken prisoners.

Buenos Ayres, though involved in the revolutionary movement of 1810, did not separate from the mother country so early as the provinces just mentioned. In 1816, the provinces on the river La Plata proclaimed their independence. The Spanish troops maintained a contest till July, 1821.

In Mexico, a declaration of independence was published in October, 1813, by a national congress. The Spanish viceroy, however, held his ground. For some years the revolution was little more than a guerilla war, and the cause of the insurgents fell so low, that by 1819 the country was tranquil, and the rebellion considered at an end. But in that year it burst out with fresh force under a leader named Iturbide, whose authority was acknowledged throughout the country, except in the city of Mexico. Iturbide was on his march to the siege of that city when the Spanish viceroy concluded a treaty with him, called the Treaty of Cordova, by which the independence of Mexico was acknowledged, on the 24th of August, 1821.\* This treaty was subsequently declared "null and void" by the Cortes of Madrid, but the Spanish rule was in reality at an end.

In the same year, on the 15th of September, Guatemala declared its independence.† Afterwards, it was incorporated with Mexico. In 1823 it separated itself from Mexico, and the five states of Guatemala eventually formed a confederation—the States of Central America.

Peru will complete the list. Peru did not take part in the revolutionary war at the outbreak; the neighbouring States of Chili and Buenos Ayres found it necessary to carry the war into the country, and expel the Spaniards in defence of their own independence. Accordingly, in February, 1821, a combined army from Chili and Buenos Ayres laid siege to Lima, which was

\* State Papers, ix. 431.

† State Papers, ix. 854.



evacuated by the Spanish general after a short resistance. The fleet under the command of Lord Cochrane co-operated with the land forces, and captured the port of Callao. The independence of Peru was declared on the 28th of July, 1821; but the new Government was feeble, and its measures were unsuccessful. The Spanish adherents rapidly regained ground; Lima and Callao fell again into their hands. At this juncture, in September, 1823, Bolivar arrived from Columbia to join the independents, and was made dictator. His name and his measures infused new strength. Before the end of the next year, on the 9th of December, the Spanish viceroy was defeated at the battle of Ayacucho. The victory was complete; the viceroy was taken prisoner, and his army was dispersed. Callao now alone held out for the royal cause; and its defence was the last and most chivalrous event of the war. Rodil, the governor, refused to be included in the capitulation entered into by the Spanish general at Ayacucho, on the ground that the governor of Callao held the fortress directly under the King of Spain. He gave shelter to all the royalist refugees, and prepared to defend the place to the last. They were besieged by sea and by land; they were reduced to live on the flesh of horses and dogs. Famine and fever thinned their ranks; there were no more dogs and horses to be eaten. It is said that out of four thousand, only two hundred survived. Then, after a siege of more than a year, Rodil capitulated in January, 1826.

The revolution immediately had the effect of giving a great impulse to the industry of the continent, and of increasing the trade both with the United States and England. In consequence, in 1818, Buenos Ayres requested the United States to receive consuls, alleging that the subjects of Buenos Ayres were placed in a position of inequality, as compared with Spanish subjects, since the latter had consuls officially to protect their interests before the judicial tribunals, while the former had not. The request was supported by the argument, that a consul from the United States was residing in Buenos Ayres; and that, therefore, a consul from Buenos Ayres might be received by the United States. The request was refused, as prematurely involv-

ing recognition.\* On the second point, Mr. Adams, the Foreign Minister, said, that the continued residence of a consul at Buenos Ayres, appointed in fact before the revolution, "implied no recognition of any particular Government."

His remarks on the former point are worth quoting at length, as exemplifying an inequality between the revolted province and the mother country, as regards a foreign Power, resulting from their respective characters, and not from a want of neutrality on the part of the foreign Power :—

"The equality of rights to which the two parties to a civil war are entitled, in their relations with neutral Powers, does not extend to the rights enjoyed by one of them, by virtue of treaty stipulations contracted before the war; neither can it extend to the rights, the enjoyment of which essentially depends upon the issue of the war."

"We receive consuls from Spain by Treaty."

"Consuls are indeed received by the Government of the United States from acknowledged Sovereign Powers, with whom they have no Treaty. But the exequatur for a Consul-General, can obviously not be granted without recognising the authority, from whom his appointment proceeds, as Sovereign. The Consul, says Vattel, (Book 2, c. 2, ss. 3, 4), is not a Public Minister; but, as he is charged with a commission from his Sovereign, and received in that quality by him where he resides, he should enjoy, to a certain extent, the protection of the Law of Nations."

"If, from this state of things, the inhabitants of Buenos Ayres cannot enjoy the advantages of being officially represented before the courts of the United States by a consul, while the subjects of Spain are entitled to that privilege, it is an inequality resulting from the nature of the contest in which they are engaged, and not from any denial of their rights as parties to a civil war. The recognition of them as such, and the consequent admission of their vessels into the ports of the United States, operate with an inequality against the other party to the civil war, and in their favour."\*

\* State Papers, vii. 1062.

At the same time Mr. Adams unofficially communicated and transacted business with the agent whom he refused to receive as a Consul-General.

But the events of the next three years produced a great change. By the end of 1821, as we have seen, Spain had very little authority left to her within any one of her ancient provinces. Not unnaturally, the United States were the first to recognise the independence of the new States thus formed on their own Continent.

In 1822 the views of the Government of the United States were explained in a message of the President, Mr. Monroe, to Congress, of the 8th of March. It is a State Paper deserving the highest praise :

“ The revolutionary movement in the Spanish provinces in this hemisphere attracted the attention, and excited the sympathy of our fellow-citizens from its commencement. This feeling was natural and honourable to them, from causes which need not be communicated to you. It has been gratifying to all to see the general acquiescence which has been manifested in the policy which the constituted authorities have deemed it proper to pursue in regard to this contest. As soon as the movement assumed such a steady and consistent form, as to make the success of the provinces probable, the rights to which they were entitled by the law of nations, as equal parties to a civil war, were extended to them. Each party was permitted to enter our ports with its public and private ships, and to take from them every article which was the subject of commerce with other nations. Our citizens, also, have carried on commerce with both parties, and the Government has protected it with each in articles not contraband of war. Through the whole of this contest the United States have remained neutral, and have fulfilled with the utmost impartiality all the obligations incident to that character.

“ This contest has now reached such a stage, and been attended with such decisive success on the part of the provinces, that it merits the most profound consideration, whether their right to the rank of independent nations, with all the advantages incident to it, in their intercourse with the United States, is

" not complete. Buenos Ayres assumed that rank by a formal  
 " declaration in 1816, and has enjoyed it since 1810, free from  
 " invasion by the parent country. The provinces composing the  
 " Republic of Columbia, after having separately declared their  
 " independence, were united by a fundamental law of the 17th  
 " of December, 1819. A strong Spanish force occupied at that  
 " time certain parts of the territory within their limits, and  
 " waged a destructive war. That force has been repeatedly de-  
 " feated, and the whole of it either made prisoners or destroyed,  
 " or expelled from the country, with the exception of an incon-  
 " siderable portion only, which is blockaded in two fortresses.  
 " The provinces on the Pacific have likewise been very success-  
 " ful. Chili declared independence in 1818, and has since en-  
 " joyed it undisturbed; and of late, by the assistance of Chili  
 " and Buenos Ayres, the revolution has extended to Peru. Of  
 " the movement in Mexico, our information is less authentic;  
 " but it is, nevertheless, distinctly understood, that the new  
 " Government has declared its independence, and that there  
 " is now no opposition to it there, nor a force to make  
 " any. For the last three years, the Government of Spain  
 " has not sent a single corps of troops to any part of  
 " that country; nor is there any reason to believe it will  
 " send any in future. Thus, it is manifest, that all those  
 " provinces are not only in the full enjoyment of their indepen-  
 " dence, but, considering the state of the war and other circum-  
 " stances, that there is not the most remote prospect of their  
 " being deprived of it.

" When the result of such a contest is manifestly settled, the  
 " new Governments have a claim to recognition by other Powers,  
 " which ought not to be resisted. Civil wars too often excite  
 " feelings which the parties cannot control. The opinion enter-  
 " tained by other Powers as to the result, may assuage those  
 " feelings, and promote an accommodation between them, useful  
 " and honourable to both. The delay which has been observed  
 " in making a decision on this important subject, will, it is pre-  
 " sumed, have afforded an unequivocal proof to Spain, as it must  
 " have done to other Powers, of the high respect entertained by

“ the United States for her rights, and of their determination  
 “ not to interfere with them. The provinces belonging to this  
 “ hemisphere are our neighbours, and have, successively, as each  
 “ portion of the country acquired its independence, pressed their  
 “ recognition by an appeal to facts not to be contested, and which  
 “ they thought gave them a just title to it. To motives of in-  
 “ terest, this Government has invariably disclaimed all preten-  
 “ sion, being resolved to take no part in the controversy, or other  
 “ measure in regard to it, which should not merit the sanction  
 “ of the civilized world. To other claims, a just sensibility has  
 “ been always felt, and frankly acknowledged, but they in them-  
 “ selves could never become an adequate cause of action. It  
 “ was incumbent on this Government to look to every important  
 “ fact and circumstance on which a sound opinion could be  
 “ formed ; which has been done. When we regard, then, the  
 “ great length of time which this war has been prosecuted, the  
 “ complete success which has attended it in favour of the pro-  
 “ vinces, the present condition of the parties, and the utter  
 “ inability of Spain to produce any change in it, we are com-  
 “ pelled to conclude that its fate is settled, and that the pro-  
 “ vinces which have declared their independence, and are in the  
 “ enjoyment of it, ought to be recognised.

“ In proposing this measure, it is not contemplated to change  
 “ thereby, in the slightest manner, our friendly relations with  
 “ either of the parties, but to observe, in all respects, as hereto-  
 “ fore, should the war be continued, the most perfect neutrality  
 “ between them. Of this friendly disposition an assurance will  
 “ be given to the Government of Spain, to whom it is presumed  
 “ it will be, as it ought to be, satisfactory. The measure is pro-  
 “ posed, under a thorough conviction that it is in strict accord  
 “ with the Law of Nations ; that it is just and right as to the  
 “ parties ; and that the United States owe it to their station and  
 “ character in the world, as well as to their essential interests, to  
 “ adopt it.”\*

The Committee of Foreign Affairs, to which this message was  
 referred, reported upon it in a Paper of the 19th of March, 1822.

\* State Papers, ix. 366 ; Martens' *Nouveau Rec.* vi. 148.

The Paper begins with a finding of the fact of independence. After a recital of the events I have mentioned, up to the date of the Paper, it is said :—

“ Such are the facts which have occupied the attention of your Committee, and which, in their opinion, irresistibly prove that the nations of Mexico, Columbia, Buenos Ayres, Peru, and Chili, in Spanish America, are in fact independent.”

The right and expediency of recognising the independence they had “effectually achieved” are next examined.

“ The political right of this nation to acknowledge their independence, without offending others, does not depend on its justice, but on its actual establishment. To justify such a recognition by us, it is necessary only to show, as is already sufficiently shown, that the people of Spanish America are within their respective limits exclusively sovereign, and thus in fact independent. With them, as with every other Government possessing and exercising the power of making war, the United States, in common with all nations, have the right of concerting the terms of mutual peace and intercourse.”

The expediency of recognition is treated of as regards both Spain and the other nations of Europe. The reasoning is temperate and conciliatory. It is enough to quote one sentence which refers to the other nations of Europe :—

“ It is not unreasonable to suppose that those Governments have, like this, waited only for the evidence of facts, which might not only suffice to justify them, under the laws and usages of nations, but to satisfy Spain herself, that nothing has been prematurely done, or which could justly offend her feelings, or be considered as inconsistent with her rights.” \*

The message of the President called forth a remonstrance from the Spanish minister at Washington ; but his argument is founded on the absence in the provinces of Governments entitled to recognition, rather than on any actual hold still retained by Spain. On this latter point all he alleged is contained in these sentences :—

“ Peru, conquered by a rebel army, has near the gates of the

\* Martens' Nouveau Rec. vi. 152.

“ capital another Spanish army, aided by part of the inhabitants.”

“ On the coast of Firma the Spanish banners wave.

“ In Mexico there is no Government, and the result of the questions which the chiefs commanding there have put to Spain is not known.”\*

Peru was the strongest instance ; for these sentences were written at a time when the independent Government appeared unstable, after its first successes in 1821, and before its final success at Ayacucho.

The independence of Mexico had been settled, as we have seen, by the Treaty of Cordova.

The waving banners were those of a small naval force at Puerto Cabello, which attempted, without much success, to harass the coasts of Columbia.

Mr. Adams declined to discuss the detail of facts upon which the Spanish Government (he said) appeared to have information materially different from that which was of public notoriety ; and gave to this remonstrance the following unanswerable reply :—

“ In the conflicts which have attended these revolutions, the United States have carefully abstained from taking any part respecting the right of the nations concerned in them to maintain, or new organize, their own political constitutions, by observing, wherever it was a contest by arms, the most impartial neutrality. But the civil war, in which Spain was for some years involved with the inhabitants of her colonies in America, has, in substance, ceased to exist. Treaties, equivalent to an acknowledgment of independence, have been concluded by the commanders and viceroys of Spain herself, with the Republic of Columbia, with Mexico, and with Peru ; while, in the provinces of La Plata and in Chili, no Spanish force has for several years existed, to dispute the independence which the inhabitants of those countries had declared.

“ Under these circumstances, the Government of the United States, far from consulting the dictates of a policy question-

\* State Papers, ix. p. 752.

“ able in its morality, has yielded to an obligation of duty of  
 “ the highest order, by recognizing as independent States, nations  
 “ which, after deliberately asserting their right to that character,  
 “ had maintained and established it, against all the resistance  
 “ which had been or could be brought to oppose it. This recog-  
 “ nition is neither intended to invalidate any right of Spain,  
 “ nor to affect the employment of any means which she may  
 “ yet be disposed or enabled to use, with the view of re-uniting  
 “ those provinces to the rest of her dominions. It is the mere  
 “ acknowledgment of existing facts, with the view to the regular  
 “ establishment with the nations newly formed, of those relations,  
 “ political and commercial, which it is the moral obligation of  
 “ civilized and Christian nations to entertain reciprocally with  
 “ one another.”\*

There had naturally been a strong sympathy in the United States with the revolution. In a despatch of the 10th of May, 1825, containing a sketch of the policy of the United States throughout the war, Mr. Clay writes :—

“ The United States have been inactive and neutral spectators  
 “ of the passing scenes. Their frankness forbids, however, that  
 “ they should say that they have beheld those scenes with feel-  
 “ ings of indifference. They have, on the contrary, anxiously  
 “ desired that other parts of this continent should acquire and  
 “ enjoy that independence, with which, by their valour and the  
 “ patriotism of the founders of their liberty, they have been,  
 “ under the smiles of Heaven, so greatly blessed.”†

A little later Mr. Adams claimed that the United States had taken the lead in the recognition of South American independence, and given both to Europe and America the benefit of their example.‡ But however strong may have been the “sympathetic feeling,” the conduct of the United States throughout was scrupulous.

The conduct of England was still more scrupulous. The independence of the South American republics was not recognised till 1825. Before that, the following negotiations took place :—

\* Martens' N. R. vi. 152. † State Papers, ix. 755. ‡ Ib. xiii. 465, 478.



In 1810, the King's single mediation was asked and granted to Spain, to effect a reconciliation.

In 1812, the mediation of England was offered to Spain, without assuming the independence of the Provinces as the basis of mediation.

In 1815, Spain asked the mediation of England, but refused to state the terms on which she was willing to agree.

In 1818, the question of an arrangement between Spain and her American Colonies was discussed by the Great Powers at Aix-la-Chapelle, without independence being assumed as the basis. The opinion of the Powers was communicated to Spain, but she observed silence on the subject.

In May, 1822, Spain announced to England that she had measures in contemplation on a new basis, without however describing the basis. In answer, advice was given to hasten the negotiations, as the course of events would not admit of much longer delay.

In the following November, the English Minister at Madrid received an intimation that the Cortes meditated opening negotiations with the Colonies "on the basis of colonial independence." The negotiations were opened and carried through with Buenos Ayres, though subsequently disowned by the Spanish Government.

The first suggestion, therefore, of a negotiation on the basis of independence, came from Spain. After this communication, England expressed her opinion as to the hopelessness of negotiating on any other basis. This opinion was stated, in the first instance, confidentially to Spain, and afterwards, in October, 1823, it was mentioned by Mr. Canning, in a conference with Prince Polignac, the French ambassador in London, and communicated by the latter to Spain and other Powers. It was repeated in a despatch from Mr. Canning to the English Minister at Lisbon, in January, 1824.\* The same despatch contains the following passage:—

" But it appears manifest to the British Government, that, if

\* State Papers, xi. p. 58.

“ so large a portion of the globe should remain much longer  
 “ without any recognised political existence, or any definite political connexion with the established Governments of Europe,  
 “ the consequences of such a state of things must be at once  
 “ most embarrassing to those Governments, and most injurious  
 “ to the interests of all European nations.

“ For these reasons, and not from mere views of selfish  
 “ policy, the British Government is decidedly of opinion, that  
 “ the recognition of such of the new States as have established  
 “ *de facto* their separate political existence, cannot be much  
 “ longer delayed.

“ The British Government have no desire to anticipate Spain  
 “ in that recognition. On the contrary, it is on every account  
 “ their wish that His Catholic Majesty should have the grace  
 “ and the advantage of leading the way in that recognition,  
 “ among the Powers of Europe. But the Court of Madrid  
 “ must be aware, that the discretion of his Majesty in this respect cannot be indefinitely bound up by that of His Catholic  
 “ Majesty; and that, even before many months elapse, the  
 “ desire now sincerely felt by the British Government, to leave  
 “ this precedency to Spain, may be overborne by considerations  
 “ of a more comprehensive nature—considerations regarding not  
 “ only the essential interests of His Majesty’s subjects, but the  
 “ relations of the old world with the new.”

These negotiations are detailed in a Note written by Mr. Canning, in 1825.\* They extended over a period of fourteen years, and included not only offers on the part of England, but more than one request for mediation on the part of Spain. One point was made prominent in them: the desire of England not to precipitate recognition so long as there was any reasonable chance of an accommodation with the mother country, by which the recognition might come first from Spain.

Meanwhile, English commerce required, not only negotiation, but action.

In 1822, an Act was passed, authorising the importation of goods, “ the growth, production, or manufacture of any country

\* State Papers, xii. p. 909.

or place in America, being or having been a part of the dominions of the King of Spain," in ships of the build of the country, as well as in British ships : or, if the country or place should, before or at the time of importation, happen to be under the dominion of the King of Spain, or, if any doubt exist thereon, then in Spanish ships.\* Without this permission, under the old Navigation Laws, the goods could have been imported only in British or Spanish ships.

In the following year consuls were sent to the several provinces of Spanish America, as such appointments were absolutely necessary for the protection of English trade in those countries. The measure had been "long deferred out of delicacy for Spain."

On the 15th of June, 1824, Sir J. Mackintosh presented a petition from the merchants of London to the House of Commons, praying for "the immediate recognition of the independence of such of the States of South America as have, de facto, established the same."† His speech on the occasion, and Mr. Canning's reply, are always referred to in explanation of the principles and practice of Recognition. This must be my excuse for quoting from them again. The principles will be best understood by seeing their application discussed.

I quote from Sir J. Mackintosh :—

" It is said, that we are called upon only to acknowledge the fact of independence, and, before we make the acknowledgment, we ought to have evidence of the fact. To this single point the discussion is now confined. The fact of independence is now the sole object of consideration. If there be no independence, we cannot acknowledge it ; if there be, we must.

" To understand the matter rightly, we must consider separately — what are often confounded — the two questions : Whether there is a contest with Spain still pending? And, whether internal tranquillity be securely established? As to the first, we must mean such a contest as exhibits some equality of force, and of which, if the combatants were left to themselves, the issue would be in some degree doubtful. It

\* 3 Geo. 4, c. 43, ss. 3, 4. † See Petition, Canning's Speeches, v. p. 291.

" never can be understood so as to include a bare chance, that  
 " Spain might recover her ancient dominions at some distant  
 " and absolutely uncertain period."

The question of a contest was soon disposed of.

" What is the Spanish strength? A single castle in Mexico,  
 " an island on the coast of Chili, and a small army in Upper  
 " Peru! Is this a contest approaching to equality? Is it suffi-  
 " cient to render the independence of such a country doubtful?  
 " Does it deserve the name of a contest?"

On the second question, he said:—

" I shall be reminded of the second condition (as applicable to  
 " Mexico and Peru)—the necessity of a stable Government and  
 " internal tranquillity. Independence and good Government are,  
 " unfortunately, very different things. Most countries have  
 " enjoyed the former; not above two or three, since the beginning  
 " of history, have had any pretensions to the latter. Still, many  
 " grossly misgoverned countries have performed the common  
 " duties of justice and goodwill to their neighbours. I do not  
 " say so well as more wisely ordered commonwealths, but still  
 " tolerably, and always much better than if they had not been  
 " controlled by the influence of opinion acting through a regular  
 " intercourse with other nations." \*

Mr. Canning replied. He confined himself as much as possible to a simple statement of facts. The course laid down by ministers was one of strict neutrality. They had first allowed the colonists to assume an equal belligerent rank with the parent country, and, in so doing, *pro tanto* raised them in the scale of nations. In 1822, the commerce then existing between England and the colonies of Spain had led to another *de facto* recognition of their separate political existence; their commercial flag was recognised, and admitted to the same advantages as the flags of independent states in unity with England. The recognition of the independence of the colonies had been delayed. This was the reasonable course, even if the interests of the colonies were exclusively looked at. It must be an object of higher importance to them that the recognition by England should be delayed, in the hope

\* Mackintosh's Works, pp. 759, 760, 762.

of bringing with it a similar concession from Spain, rather than that the recognition by England should be so precipitate as to postpone, if not prevent, recognition by the mother country, and added that the obligation of waiting for Spain was at an end.\*

Accordingly, treaties were made with Rio de la Plata and Columbia in the Spring of 1825; and in the following year a Chargé d'affaires was sent to Mexico. The appointments made in Chili and Peru were consular appointments.

One more quotation from a Note of Mr. Canning, of the 25th of March, 1825, will complete the account of this transaction. The Spanish Government had alleged, that the course adopted was a violation of International Law. This was the answer given:—

“ Has it ever been admitted as an axiom, or ever been observed by any nation or Government as a practical maxim, that no circumstances, and no time, should entitle a *de facto* Government to recognition?—or should entitle third Powers, who may have a deep interest in defining and establishing their relations with a *de facto* Government, to do so?

“ Such a proceeding on the part of third Powers, undoubtedly, does not decide the question of right against the mother country.

“ The Netherlands had thrown off the supremacy of Spain long before the end of the sixteenth century; but that supremacy was not formally renounced by Spain till the treaty of Westphalia in 1648. Portugal declared, in 1640, her independence of the Spanish monarchy; but it was not till 1668 that Spain, by treaty, acknowledged that independence.

“ During each of these intervals, the abstract rights of Spain may be said to have remained unextinguished. But third Powers did not, in either of these instances, wait the slow conviction of Spain, before they thought themselves warranted to establish direct relations, and even to contract intimate alliances with the Republic of the United Netherlands, as well as with the new monarchy of the House of Braganza.

“ The separation of the Spanish colonies from Spain has been

\* Canning's Speeches, v. p. 300.

“ neither our work nor our wish. Events, in which the British  
 “ Government had no participation, decided that separation,—a  
 “ separation which, we are still of opinion, might have been  
 “ averted, if our counsels had been listened to in time. But, out  
 “ of that separation grew a state of things, to which it was the  
 “ duty of the British Government (in proportion as it became the  
 “ plain and legitimate interest of the nation whose welfare is  
 “ committed to its charge,) to conform its measures, as well as its  
 “ language, not hastily and precipitately, but with due delibera-  
 “ tion and circumspection.

“ To continue to call that a possession of Spain, in which all  
 “ Spanish occupation and power had been actually extinguished  
 “ and effaced, could render no practical service to the mother  
 “ country ; but it would have risked the peace of the world. For  
 “ all political communities are responsible to other political com-  
 “ munities for their conduct; that is, they are bound to perform  
 “ the ordinary international duties, and to afford redress for  
 “ any violation of the rights of others by their citizens and  
 “ subjects.

“ Now, either the mother country must have continued  
 “ responsible for acts, over which it could no longer exercise the  
 “ shadow of a control, or the inhabitants of those countries,  
 “ whose independent political existence was, in fact, established,  
 “ but to whom the acknowledgment of that independence was  
 “ denied, must have been placed in a situation, in which they  
 “ were wholly irresponsible for all their actions, or were to be  
 “ visited, for such of those actions as might furnish ground of  
 “ complaint to other nations, with the punishment due to pirates  
 “ and outlaws.

“ If the former of these alternatives,—the total irrespon-  
 “ sibility of unrecognised States,—be too absurd to be main-  
 “ tained ;—and if the latter,—the treatment of their inhabitants  
 “ as pirates and outlaws,—be too monstrous to be applied, for an  
 “ indefinite length of time, to a large portion of the habitable  
 “ globe, no other choice remained for Great Britain, or for any  
 “ country having intercourse with the Spanish American Pro-  
 “ vinces, but to recognise, in due time, their political existence

“ as States, and thus to bring them within the pale of those rights  
 “ and duties which civilised nations are bound mutually to  
 “ respect, and are entitled reciprocally to claim from each  
 “ other.”\*

This is the great case which contains all the international law on the subject of Recognition, and to which appeal is always made. The United States contributed no less than England to fix the principles of the law. England has uniformly declared her adherence to these principles. In 1849, during the revolution in Hungary, the United States certainly deviated from these principles, by investing an agent in Europe with power to declare their willingness to recognise the new State, in the event of its ability to sustain itself.† This policy was not marked with the caution observed by previous statesmen, and justly gave great offence to Austria. It was proved by the result of the revolution to have been a false move. But false move or not, it must be regarded as an exceptional act. The precedent of 1822 contains the rules of the national policy. The following passage from the message of President Jackson, of the 21st of December, 1836, places this beyond a doubt.

“ The acknowledgment of a new State as independent, and  
 “ entitled to a place in the family of nations, is, at all times, an  
 “ act of great delicacy and responsibility; but more especially so  
 “ when such State has forcibly separated itself from another, of  
 “ which it had formed an integral part, and which still claims  
 “ dominion over it. A premature recognition under these circum-  
 “ stances, if not looked upon as a justifiable cause of war, is  
 “ always liable to be regarded as a proof of an unfriendly spirit to  
 “ one of the contending parties. All questions relative to the  
 “ government of foreign nations, whether of the old or new world,  
 “ have been treated by the United States as questions of fact  
 “ only; and our predecessors have carefully abstained from decid-  
 “ ing upon them until the clearest evidence was in their possession,  
 “ to enable them not only to decide correctly, but to shield their  
 “ decisions from every unworthy imputation. In all the contests  
 “ that have arisen out of the revolutions of France, out of the

\* State Papers, xii. 912.

† Wheaton's Elements, p. 35, Note (a). (Edition, 1857.)

“ disputes relating to the crowns of Portugal and Spain, out of  
 “ the separation of the American possessions of both from the  
 “ European Governments, and out of the numerous and constantly  
 “ occurring struggles for dominion in Spanish America, so wisely  
 “ consistent with our just principles has been the action of our  
 “ Government, that we have under the most critical circumstances  
 “ avoided all censure, and encountered no other evil than that pro-  
 “ duced by a transient estrangement of goodwill in those against  
 “ whom we have been, by force of evidence, compelled to decide.

“ In the contest between Spain and her revolted Colonies, we  
 “ stood aloof, and waited not only until the ability of the new  
 “ States to protect themselves was fully established, but until the  
 “ danger of their being again subjugated had entirely passed  
 “ away. Then, and not until then, were they recognised.”\*

We should not omit to notice, that in the application of these common principles in the case of the recognition of the Spanish American States, there was a difference between the conduct of the United States and the conduct of England. The United States waited till the facts warranted recognition, and then embraced the opportunity of setting the example of recognition to the rest of the world. England waited still longer, in the hope that delay might induce Spain to take the lead of her.

One remark more, and we may leave the case. The State Papers of the United States in the case are at the present moment of great value. The exposition of the law contained in them is the same in its principles as the English exposition; but the American exposition speaks to Americans more forcibly than the English exposition can speak. President Lincoln and President Davis both look on President Jackson and President Monroe as their predecessors. The precedent of 1822 is the common property of the Northern and Southern sections of the United States. It is binding on both alike. Both may be well content to be governed by such an authority. Each will find a representative in one of the Presidents quoted above. President Jackson, a native of South Carolina, now one of the Confederate States, has furnished the rule to be observed by neutral nations during

\* Presidents' Messages, p. 585.



the continuance of the contest. President Monroe, a native of North Virginia, has furnished the rule to be observed at the close of the contest. The Southern statesman enforces delay in recognition, not only to obtain the clearest evidence for a correct decision, but to shield the decision from every unworthy imputation. The Northern statesman enforces recognition when the result of the contest is manifestly settled, not only as a measure due to the new Government, but in order that the opinion of other Powers as to the result may assuage the feelings excited by the civil war, and promote an accommodation between the contending parties.

Two cases are constantly referred to as instances of recognition which have no real bearing on the subject—the case of Greece and that of Belgium. Geographically they lie beyond the range of the title of these pages. I mention them by way of contrast. A few words will prove that they were instances, not of simple recognition, but of recognition coupled with direct intervention under circumstances peculiar to Europe.

Previously to its independence, Greece was subject to Turkey—a Christian nation under the dominion of a Mahometan Power. In addition, the Turkish rule was tyrannical. Now, the relations of the Christian Powers of Europe to Turkey have always been anomalous. It was not till the treaty of Paris, in 1856, that the latter was declared “to be admitted to participate in the advantages of the public law and system of Europe.” When, therefore, Greece declared her independence of Turkey in 1822, Turkey was not fully within the pale of European law, and the sympathies of Europe were strongly excited in favour of Greece, on grounds of humanity and religion. After six years of war, the Great Powers interfered. In July, 1827, France, England, and Russia entered into a treaty, the preamble of which recites that they were “penetrated with the necessity of putting an end “to the sanguinary contest, which, by delivering up the Greek “provinces and the isles of the Archipelago to all the disorders “of anarchy, produces daily fresh impediments to the commerce “of the European states, and gives occasion to piracies, which not

" only expose the subjects of the high contracting parties to considerable losses, but besides render necessary burdensome measures of protection and repression." It further states, that they acted upon the pressing invitation of Greece to England and France.

The Treaty contained the arrangements to be proposed, which were not those of absolute independence. A secret article was added, authorising the representatives of the Powers, in case of the rejection of the proposed arrangements, to discuss and determine the ulterior measures necessary.\* The Greeks accepted the mediation; the Turks refused. Before the intervention ended and Greek independence was established, the Allies destroyed the Turkish fleet at Navarino, and a French army occupied the Morea. It is difficult to conceive anything more unlike simple recognition.

Belgium was united to Holland by the 55th Article of the Treaty of Vienna. The kingdom of the Netherlands was thus the creation of the Powers who signed that treaty. The union between the two populations proved uncongenial to both; and a revolution broke out in 1830. The King invited Austria, France, Great Britain, Prussia, and Russia, in their quality of Powers having signed the treaties of Paris and Vienna, which had constituted the kingdom of the Netherlands, to deliberate in concert with his Majesty upon the best means of putting an end to the troubles which had arisen in his states. This invitation was given under the 4th Article of the Protocol of Aix-la-Chapelle, of November, 1818, directing that the conferences contemplated in the Article should take place only upon a formal invitation on the part of the State, of which the affairs were to form the subject of deliberation. This invitation let in the jurisdiction of the Five Powers. It is unnecessary to trace the negotiations which followed. They assumed alternately the character of a mediation, of a forcible arbitration, or of an armed intervention, according to the varying events of the struggle, and the fluctuating views of the Powers interested in terminating it.† A quotation from the Protocol of the 20th of December,

\* State Papers, xviii. p. 728.

† Wheaton's History of the Law of Nations, p. 354.

1830, will show the views entertained by the Five Powers of their jurisdiction,—a jurisdiction which they ultimately exercised by erecting Belgium into a separate kingdom :—

“ The Plenipotentiaries have met to deliberate on the ulterior measures to be taken, with the object of remedying the derangement which the troubles in Belgium have caused in the system established by the treaties of 1814 and 1815.

“ In forming, by the treaties in question, the union of Belgium with Holland, the Powers who signed those treaties had for their object to establish a just balance of power in Europe, and to secure the maintenance of the general peace.

“ The events of the last four months have, unfortunately, demonstrated that the perfect and complete amalgamation, which the Powers wished to effect between these two countries, had not been obtained ; that it would be impossible for the future to effectuate it ; that thus the very object of the union of Belgium with Holland is destroyed ; and that henceforth it becomes indispensable to recur to other arrangements to accomplish the intentions for which this union was to have been the means.

“ The Conference will consequently employ itself in discussing and concerting the new arrangements most proper to combine the future independence of Belgium with the stipulations of existing treaties, with the interests and security of other Powers, and with the preservation of the European balance of power.”\*

This language sounds strangely unlike the acknowledgment of independence *de facto* obtained by a State itself. It does not require a legal intellect to perceive that the origin of the kingdom of the Netherlands, the purpose for which it was constituted, the request for mediation, and the rights of the Great Powers derived from the same treaty which constituted the kingdom, make the case of Belgium one unlike every other, and governed wholly by the European settlement of Vienna.

To return from this digression. The law now acknowledged may be stated in the following propositions :—

\* State Papers, xviii. 749.

1. When a rebellion or insurrection has become a civil war, a foreign Power should consider the contending parties as two distinct parties, both entitled to the rights of belligerents.

2. While the civil war continues, a foreign Power desirous of preserving neutrality, should remain an impartial spectator. If, however, its own relations with the revolted province require, and the facts warrant such a recognition,—the foreign Power may recognise the separate political existence of the revolted province, so far as regards its foreign relations, without prejudging the question as to its ultimate and absolute independence of the parent State.\*

This is a limited recognition. The subject is difficult, and deserves a few words to give some though probably an incomplete explanation. Mr. Canning said, in 1823, that the law of nations was entirely silent with respect to the course, which, under a circumstance so peculiar as the transition of colonies from their allegiance to the parent State, ought to be pursued. His policy then, is our chief guide now.

“In such contests,”—I quote from an American judgment upon a matter arising out of the Spanish American revolution, a sentence enumerating the possible courses of action,—“a nation “ may engage itself with the one party or the other,—may “ observe absolute neutrality;”—(inaction would have been a more accurate term; )—“ may recognise the new State absolutely; “ —may make a limited recognition of it.”† We have thrown the first course wholly out of consideration: we are engaged with the last.

The period of civil war down to the ultimate recognition of the revolted province as an independent State, often gives rise to questions of great delicacy and difficulty in the relations between the revolted province and the foreign Power; especially if the revolution does not greatly interfere with commerce, and still more, if, as in the case of the Spanish American Colonies, the revolution actually increases commerce. The management of these relations belongs to the executive departments of the foreign Power. Nor is the difficulty of the management fully

\* Halleck's International Law, c. iii., s. 21.

† *United States v. Palmer*, 3 Wheaton's R. 634.

will command a favourable hearing for their claim to be admitted into the community of nations. The claim will be allowed, as it ought to be allowed, not only for the protection and regulation of our own interests, which, protected or unprotected, must be affected by the new State, but also for two more cogent reasons—in order not to leave any civilized nation without the pale, and therefore only partially under the influence, of the public opinion of other nations; and in order to follow the great principle of acknowledging facts. But no Englishman, I should hope, can feel for the Confederate States the smallest enthusiasm. Most of us believe that the world will gain by a division of the overgrown empire of the United States. Many of us anticipate that the cause of negro emancipation will also gain. Very few have any faith in the anti-slavery professions of the North, nor has our faith been strengthened by the late proclamation. On the other hand, it is impossible not to think that the negro population will occupy a stronger position in relation to their masters, when those masters are no longer supported, as hitherto, by the moral and physical power derived from union with the North. The greater facilities for escape on a long frontier, and the jealousy with which the North will watch the South, must tend to improve their condition. There is no inclination among us to underrate the difficulties of emancipation; for the security of the State it should be gradual; we should hail a step towards freedom—the slightest advance from slavery to serfdom. But no such prospect is held out by the statesmen of the South. Slavery is put forward as a fundamental institution. The English Minister to whose lot it may fall to make the recognition, after recording his admiration of the struggle thus crowned with success, will have to add, that England would be false to her traditions if she could welcome with heartiness a State, which, at the moment of its entrance into the community of nations, openly professes principles solemnly condemned by the whole Christian world.